

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-552

**Office of Financial & Insurance
Services,
Division of Securities,
Petitioner**

Agency No. 01-279-BD

**Agency: Office of Financial & Insurance
Services**

v

**Investor's Advocate, LLC, et al,
Respondents**

**Case Type: Sanction
Summary Suspension**

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**Issued and entered
this 6th day of November, 2001
by James L. Karpen
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: David E. Silver, Assistant Attorney General, appeared on behalf of Petitioner, Office of Financial and Insurance Services. Neither Respondent, Investor's Advocate, LLC or the other Respondents appeared at the hearing, nor were they represented by counsel at the hearing.

This proceeding was commenced with the filing of a Notice of Hearing upon an Order for Summary Suspension, Order to Cease and Desist and Notice of Opportunity for Administrative Hearing, dated April 12, 2001. The Notice of Hearing informed Respondents that failure to appear at a scheduled hearing may result in a default being entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, 1969 PA 306, as

amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.* (APA). The hearing in this matter was originally scheduled for May 8, 2001. At the request of the parties, the hearing was rescheduled to August 21, 2001. The hearing was adjourned at the request of Respondent Investor's Advocate, LLC to October 24, 2001. As noted earlier, Respondents failed to appear at the October 24, 2001 hearing.

The April 12, 2001 initial order named, in addition to Investor's Advocate, LLC, five individual Respondents. All Respondents were charged with various violations of the Michigan Uniform Securities Act, 1964 PA 265, as amended, MCL 451.501 *et seq.*; MSA 19.776(101) *et seq.* (Act). On September 26, 2001 Petitioner issued an Amended Order for Summary Suspension, Order to Cease and Desist, and Notice of Administrative Hearing (Amended Order). The Amended Order named as Respondents Investor's Advocate, LLC and Steve A. Maczka, the chief executive officer of Investor's Advocate, LLC. The Amended Order charged Respondent Investor's Advocate, LLC with violation of the net capital requirements and filing false and misleading information with the administrator. Both Respondents were charged with failing to provide documents to the administrator and with violating a provision of the Act and/or the rules promulgated under the Act.

Petitioner's counsel asked to be allowed to proceed in the Respondents' absence pursuant to Section 72 of the APA, and that a default be granted on behalf of Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

(1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by... default... .

The Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Petitioner's Amended Order are deemed true.

ISSUES AND APPLICABLE LAW

The Amended Order discloses that Respondent Investor's Advocate, LLC is registered as a broker-dealer under the Act and that Respondent Steve Maczka is registered as an agent under the Act.

Count I of the Amended Order alleges that Respondent Investor's Advocate, LLC failed to maintain sufficient net capital, failed to notify the Administrator of the net capital deficiency, and failed to cure the deficiency, all in violation of Section 202(f) of the Act.

Section 202(f) of the Act provides:

Section 202(f):

Subject to the requirements of section 15 of title I of the securities exchange act of 1934, 15 U.S.C. 78o, and section 222 of the investment advisers act of 1940, 15 U.S.C. 80b-18a, the Administrator may by rule or order require a minimum capital for registered broker-dealers and investment advisers and prescribe a ratio between net capital and aggregate indebtedness. If the registrant fails to comply with the minimum net capital requirement the registrant shall immediately cease all investment advisory services, securities, or commodities business operations, and promptly notify the Administrator of its failure to maintain the

required net capital, of the steps to be taken to cure the net capital deficiency and of its anticipated date of reopening business operations. The registrant shall not reactivate its securities or investment advisory business without prior notification to the Administrator.

Count II of the Amended Order charged both Respondents with failure to file requested documents with the Administrator in violation of Section 203(d) of the Act.

Section 203(d) of the Act provides:

Section 203(d):

All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator within or without this state, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. The expenses reasonably attributable to the examination of a matter arising under this section may be charged to the applicant or registrant involved. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as it deems it practicable in administering this subsection, may cooperate and exchange information with the securities and commodities Administrators of other states, the securities and exchange commission, the commodity futures trading commission, and any national securities exchange or national securities association registered under the securities exchange act of 1934 and other appropriate law enforcement agencies. Failure of a registrant to promptly provide records for inspection shall be cause for a summary suspension order until conclusion of the examination of the records.

Count III of the Amended Order alleges that Respondent Investor's Advocate, LLC filed false and misleading information with the Administrator, in violation of Section 404

of the Act.

Section 404 of the Act provides:

Section 404:

It is unlawful for any person to make or cause to be made, in any documents filed with the Administrator or in any proceeding under this act, any statement which is at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Count IV of the Amended Order charges both Respondents with failure to comply with the Act, rules or order issued under the Act, in violation of Section 204(a)(1)(B) of the Act.

Section 204(a)(1)(B) of the Act provides:

Section 204(a)(1)(B):

(a) The Administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if it finds that 1 or more of the following apply:

(1) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

* * *

(B) Has violated or failed to comply with any provision of this act or any rule or order under this act or a predecessor act.

FINDINGS OF FACT

1. Respondent Investor's Advocate, LLC (Advocate) is a New York limited liability company authorized to do business in Michigan and registered as a broker-

dealer under the Act.

2. Respondent Steve A. Maczka (Maczka) is the chief executive officer of Investor's Advocate, LLC and is registered as a securities agent under the Act.
3. As a registered broker-dealer, Advocate is required to maintain minimum net capital of not less than \$5,000. The purpose of the broker-dealer net capital requirement is to provide, that at all times, a broker-dealer will maintain enough liquid assets so as to promptly satisfy investor claims, should the broker-dealer go out of business.
4. On December 19, 2000, the National Association of Securities Dealers Regulation, a national securities association and self-regulatory organization (hereafter NASDR), verbally notified Respondents Advocate and Maczka that Advocate was technically in net capital violation. On December 20, 2000, in response to the NASDR's notification, Respondents Advocate and Maczka sent a letter via facsimile (fax) to the NASDR confirming the net capital violation and advised the NASDR that its parent, FREETRADEZ, INC., (Freetradez) authorized a \$50,000 capital infusion. Respondents Advocate and Maczka also stated in the letter that "this transaction of funds has taken place to bring Investors Advocate back within Capital Compliance... with an Excess Net Capital of Thirty Thousand Three Hundred Two Dollars and Twenty Three Cents (\$30,302.23)."
5. Copies of the December 20, 2000 Advocate notice of net capital violation letter

were also allegedly faxed to their “clearing firm,” Miller, Johnson & Keuhn (MJK) and the Securities and Exchange Commission (SEC).

6. For the period ended December 31, 2000, the investigators determined that Advocate had negative net capital of approximately \$53,600, for a net capital deficiency of approximately \$60,300.
7. The investigators obtained documents prepared by Advocate, which purportedly showed that on December 20, 2000, Freetradez issued a check (check number 5034 on its account number 70633363) to Advocate in the amount of \$50,000, as an infusion of net capital. Advocate allegedly deposited this check on December 26, 2000, into its clearing remote bank deposit account with MJK, which allegedly brought Advocate into net capital compliance.
8. The investigators obtained bank statements from MJK for the months ended December 31, 2000 and January 31, 2001 for Freetradez’s account number 70633363. The statements did not show that the \$50,000 check (check number 5034) was ever presented for payment.
9. On January 24, 2001, Respondents Advocate and Maczka were advised by a representative of the NASDR that certain listed assets on Advocate’s financial statements were now considered non-allowable assets for net capital purposes. On January 25, 2001 Respondents Advocate and Maczka sent a letter via facsimile (fax) to the NASDR confirming Advocate “to be in Net Capital Violation thus causing a halt in trading.” Further, the fax stated that, “A follow up facsimile

shall follow to offer notification as the situation is examined and rectified.”

10. Copies of the January 25, 2001 Advocate notice of net capital violation letter were also allegedly faxed to their clearing firm MJK and to the SEC.
11. For the period ended January 31, 2001, the investigators determined that Advocate had negative net capital of approximately \$43,536, and a net capital deficiency of \$50,416.
12. In both instances, Respondent Advocate failed to comply with the minimum net capital requirement. Both Advocate and Maczka also failed to promptly notify the Administrator of Advocate's failure to comply with the minimum net capital requirement, and the steps to be taken to cure the net capital deficiency, and its anticipated date of reopening business operations.
13. During the course of the investigation, Respondents Advocate and Maczka failed to provide requested documents that related to Advocate's operations.
14. On January 30, January 31 and February 9, 2001, the investigators requested Respondents Advocate and Maczka to provide the following documents:
 - A. List of names of Registered Representatives for Investor's Advocate, LLC.
 - B. List of other employees with job descriptions.
 - C. Member minutes for Investor's Advocate, LLC.
 - D. Board minutes of Freetradez, Inc. for past year.
 - E. Clearing Agreements with Weiss, Peck & Greer, LLC and Miller,

Johnson & Kuehn, Inc.

- F. Organizational Chart for Investor's Advocate, LLC and Freetradez, Inc.
 - G. Any other agreements between Investor's Advocate, LLC and other related parties.
 - H. Financial Statements for Investor's Advocate, LLC and Freetradez, Inc., including Balance Sheet, Income Statement and any audited statements.
 - I. Advertising file.
 - J. General Ledger.
 - K. All Bank Statements for the prior 6 months.
 - L. Copies of Bank reconciliations for the prior 6 months.
 - M. Copies of Deposit Receipts and or Wire Deposit Receipts.
 - N. Copies of Cancelled Checks.
 - O. Checks received Journal and Forwarded Blotter.
 - P. Copies of paid and unpaid bills.
 - Q. List of Firms' accounts with clearing firm and accounts with affiliates.
 - R. Documentation as to the \$50,000 capital contribution and \$99,205.61 asset sale.
15. Respondents failed to submit all of the documents requested in paragraph 14.
16. On Wednesday, February 14, 2001, Matthew A. Curtis, investigator for the Conduct Review Division, Office of Financial and Insurance Services, personally served two administrative subpoenas upon Steven A. Maczka at his office

located at 8285 South Saginaw Street, Suite #7, Grand Blanc, Michigan 48439. The two subpoenas specifically named and were directed to Investor's Advocate, LLC, and Freetradez, Inc.

17. The subpoenas stated that representatives of Investor's Advocate, LLC, and Freetradez, Inc. were required to appear on February 16, 2001 at 9:30 a.m., at the Ottawa Building, 2nd Floor, 611 West Ottawa Street, Lansing, Michigan 48909, and produce the following documents, books and records:

For Investor's Advocate, LLC:

All books and records in firm's possession or control, including all Officers, Directors, Employees or Affiliates, for the period from October 1, 2000 to the present, including, but not limited to, the following:

- A. All general ledgers, books of accounts, subsidiary ledgers or journals, commission ledgers and all other internal accounting records;
- B. All bank statements, deposit slips, cancelled checks, debit or credit receipts or memoranda and all other records pertaining to the deposit or withdrawal of funds to or from banking, savings, brokerage or other accounts or institutions;
- C. All bank account reconciliations;
- D. Memorandum of all electronic transfer of funds;
- E. Memorandum of any cashier's checks;
- F. Names, addresses, and telephone numbers of all customers;
- G. All tax returns filed with the U.S. Internal Revenue Service;
- H. Any agreements, contracts, or other documentation evidencing any transactions with other parties which influences or will impact upon the firm's financial status.

- I. Copy of checks or other instruments used to convey consideration of \$99,205.61 to satisfy Agreement To Sell Assets dated December 29, 2000 between firm and Showtime Video of Burton, Inc.
18. The Respondents failed to appear before the Administrator as required by the subpoena and failed to provide the requested documents.
19. Investigators obtained photocopies of an Advocate prepared spreadsheet schedule, a bank validated deposit receipt for the amount of \$55,639.46, and what appeared to be copies of six (6) one-sided “cancelled” checks totalling \$55,300. The schedule identified \$50,000.00 as being credited to Advocate’s account and identifies the check as one issued by its parent Freetradez, Inc. The schedule made it look as if the \$50,000.00 check was related to the “parent approved” capital infusion referenced in paragraph 2 above.
20. Records obtained from the clearing remote bank, represented that the \$55,639.46 actually deposited, included all of the checks listed on the photocopied schedule except for the \$50,000.00 check from the parent-Freetradez, Inc. Copies of the “bank-provided” cancelled checks show that the \$50,000.00 check was actually written by an out-of-state investment client of Advocate for the purpose of depositing \$50,000.00 into the client’s personal trading account.
21. Additionally, a copy of the schedule was obtained from Advocate’s securities clearing firm, MJK. The schedule was identical to the one identified in

paragraph 19 above except for the entry relating to the \$50,000.00 check. The clearing firm's schedule listed the \$50,000.00 check as properly credited to the out-of-state investment client and identifies his check number as #234.

22. Account statements for Advocate's parent, Freetradez, Inc., were obtained from MJK.
23. Freetradez's month end statement for December 29, 2000, does not show a \$50,000.00 charge to its account for check #5034.
24. Further, even if check #5034 was presented for payment, Freetradez's account lacked sufficient funds. The month end closing balance for December 29, 2000 was only \$415.23.
25. The investigators also reviewed the Freetradez's month end account statement dated January 31, 2001. They determined that check #5034 had not been presented for payment.
26. As stated in paragraph 24, even if check #5034 was presented for payment, the account again lacked sufficient funds to pay it. The closing month end balance on January 31, 2001 was \$1,350.76.
27. Respondent Advocate's failure to maintain its net capital requirements and failure to notify the Administrator when it was found to be deficient in net capital is a violation of or failure to comply with a provision of the Act, Rules, or an Order

issued under the Act.

28. Respondents Advocate and Maczka's failure to comply with an Administrative subpoena and failure to produce requested documents is a violation of or failure to comply with a provision of the Act, Rules, or an Order issued under the Act.
29. Respondent Advocate and Maczka's failure to provide documents as requested by the Administrator is a violation of or failure to comply with a provision of the Act, Rules, or an Order issued under the Act.
30. Respondent Advocate's filing of false or misleading information with the Administrator is a violation of or failure to comply with a provision of the Act, Rules, or an Order issued under the Act.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, page 230. The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248; 406 NW2d 825 (1987).

As is evident from the factual findings noted above, Petitioner has established as a matter of law that Respondent Advocate violated Sections 202(f), 203(d), 204(a)(1)(B), and 404 of the Act and that Respondent Maczka violated Sections 203(d) and 204(a)(1) (B)

of the Act, as alleged in the Amended Order.

PROPOSED DECISION

Due to the serious nature of the Respondent's violations of the Act and their failure to appear at the hearing, I recommend that Advocate's broker-dealer registration and Maczka's agent registration be revoked and that both Respondents be ordered to cease and desist from further violation of the Act, rules or an order issued under the Act.

EXCEPTIONS

The parties may file exceptions to this Proposal for Decision within 20 days after the Proposal for Decision is issued and entered. An opposing party may file a response within 15 days after exceptions are filed. Exceptions shall be filed with the Office of Financial and Insurance Services, Division of Insurance, 611 West Ottawa Street, 2nd Floor, P.O. Box 30220, Lansing, Michigan 48909, Attention: Dawn Kobus.

James L. Karpen
Administrative Law Judge